

**STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND ETHICS COMMISSION**

**In re: Brett Smiley,
Respondent**

Complaint No. 2021-1

ORDER

This matter having been heard before the Rhode Island Ethics Commission on September 21, 2021, pursuant to 520-RICR-00-00-3.16 Informal Disposition (1011), and the Commission having considered the Complaint herein, the Respondents' Answers, the arguments of the parties, and the proposed Information Resolution and Settlement, which is incorporated by reference herein, it is hereby

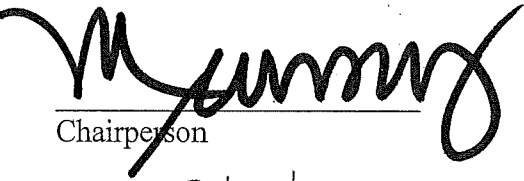
ORDERED, ADJUDGED AND DECREED

THAT, the Commission approves the Informal Resolution and Settlement; and

THAT, the Commission incorporates by reference herein the Findings of Fact and Admissions, and the Conclusions of Law, set forth in the Informal Resolution and Settlement; and

THAT, consistent therewith, the Respondent is ordered to pay a civil penalty in the amount of Four Thousand Five Hundred Dollars (\$4,500).

ENTERED as an Order of this Commission,


Chairperson

Dated: 9/21/21

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Respondent

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INFORMAL RESOLUTION & SETTLEMENT

The Respondent, Brett Smiley, and the Rhode Island Ethics Commission ("Commission") hereby agree to a resolution of the above-referenced matters as follows:

I. FINDINGS OF FACT & ADMISSIONS

1. The Respondent served as the Director of the Rhode Island Department of Administration ("DOA Director" or "Director") from January 1, 2020, until his resignation on or about March 1, 2021.

2. The broad powers and duties of DOA include, but are not limited to, the following: administering the budget for all state departments and agencies; purchasing or contracting for supplies and services needed by state departments and agencies; prescribing standard specification for such purchases and enforcing compliance; supervising and controlling the advertisement for bids and awards for state purchases; assigning office space; and renting and leasing land and buildings for the use of state departments and agencies.

3. As DOA Director, the Respondent at all times served as the State's Chief Purchasing Officer, with responsibility for purchasing, or delegating and controlling the purchase of, the combined requirements of all spending agencies of the state including, but not limited to, interests in real property, contractual services, rentals of all types, supplies, materials, equipment, and services.

4. DOA is charged with supervision of all purchases by state agencies and shall prescribe rules and regulations governing such purchases subject to approval of the Chief Purchasing Officer. No purchase or contract shall be binding on the state or any agency thereof unless approved by DOA or made under general regulations prescribed by the Chief Purchasing Officer.

5. By correspondence dated October 5, 2020, the Respondent advised the Ethics Commission of his potential interest in seeking mayoral office in the City of Providence and sought guidance as to whether, consistent with the Code of Ethics, he may “solicit and receive campaign contributions from persons who are not state employees or vendors; provided that there is no understanding that such contribution would affect any vote, official action or judgement made by [him].”

6. In his request letter, the Respondent pledged that during his tenure as Director he would not solicit or accept campaign contributions from any state employee. He represented that he would not solicit or accept contributions from any state vendor, including vendors which submitted bids and/or had active contracts with the State. The Respondent further stated that, should a donor later seek state business, he would recuse himself from any role in the procurement process.

7. On October 27, 2020, the Ethics Commission considered the Respondent’s advisory opinion request at an open meeting and, upon unanimous vote, issued Advisory Opinion 2020-45. Said Advisory Opinion focused on the application of Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011) (“Regulation 1.4.4”) which prohibits a public official or employee from soliciting or requesting, directly or through a surrogate, any political contributions from a subordinate for whom, in his official duties and

responsibilities, he exercises supervisory responsibilities. This regulation, however, does not prohibit or limit the First Amendment rights of a subordinate to make political contributions. As noted in the Advisory Opinion, for the purposes of the prohibition on solicitations, the term “subordinate” expressly includes employees, contractors, consultants, or appointed officials of the official’s or employee’s agency.

8. Based upon the Respondent’s representations, and consistent with the applicable provisions of the Code of Ethics, past advisory opinions issued, and the complaint matters cited therein, the Ethics Commission opined that the Respondent “... is not prohibited by the Code of Ethics from soliciting and receiving campaign contributions from persons who are not state employees or vendors, provided that: the persons solicited are not otherwise the [Respondent’s] subordinates as defined under the Code of Ethics” The Commission cautioned the Respondent “to be mindful of his responsibility to avoid soliciting or requesting, directly or through a surrogate, any political contributions from a subordinate, not encompassed by his representations above, for whom, in his official duties and responsibilities, he exercises supervisory responsibilities, including contractors, consultants, or officials whom the [Respondent] has appointed.”

9. At all times during the Respondent’s tenure as Director, Peregrine Group, LLC, Washington Trust Company, and Walco Electric Company had active Master Price Agreement (“MPA”) contracts with DOA. MPAs are pricing agreements between the State and qualified vendors to provide goods or services for which there is a universal need at an agreed maximum commission rate or cost.

10. Buyers within the Division of Purchases are responsible for soliciting and awarding MPAs. In the event that any deficiencies are alleged with respect to a vendor’s

performance, they would be addressed by either the State Purchasing Agent¹ or the Deputy Purchasing Agent.

11. The user agency may download a complaint form from the Division of Purchases' website for submission to the MPA buyer. The vendor would have five (5) days to respond to a letter issued by the Division of Purchases regarding its performance. Purchasing Agent McIntyre would typically handle any meetings with the vendor or other follow-up that may be required. Any actions taken by the Purchasing Agent, including the suspension or debarment of a vendor, are appealable to the Director of Administration as Chief Purchasing Officer.

12. Pursuant to § 37-2-12(b), the Chief Purchasing Officer is authorized to charge and collect from state MPA contractors a statewide contract administrative fee not to exceed 1% of the total value of the annual spend against their MPA contracts. Effective January 1, 2020, all MPA contracts are assessed the 1% fee, with some limited exceptions. The fee is automatically deducted from any MPAs paid by state agencies through RIFANS² and placed into a restricted receipt account.

13. At the time of the Respondent's appointment as DOA Director, Peregrine Group, LLC ("Peregrine")³ was one (1) of eighteen (18) vendors that DOA had previously awarded MPA-430 Owner's Representative Services for Rhode Island Capital Projects, covering the period of November 1, 2018 through June 30, 2022, and subject to four (4) one-year renewal options. MPA-430 included qualified firms to provide Owner's Representative Services on an

¹ Pursuant to R.I. Gen. Laws § 37-2-1, the Purchasing Agent is appointed by the DOA Director/Chief Purchasing Officer, subject to gubernatorial approval. At all relevant times, Purchasing Agent Nancy McIntyre reported directly to the Respondent.

² RIFANS is the State's online purchasing system.

³ Peregrine is a real estate development, property management, and third-party advisory firm based in Rumford, RI.

“as needed” basis for one or more Capital Projects, Architectural/Engineering, and/or Construction Projects.⁴

14. On May 22, 2020, DOA’s Division of Capital Asset Management and Maintenance (“DCAMM”) solicited existing MPA-430 vendors, including Peregrine, to submit quotes for Owner’s Program Manager Services for Three Alternative Hospital Sites necessitated by the COVID-19 crisis, a “mini-bid” solicitation. This request for proposals (“RFP”) sought proposals to provide Services for Pre-Design, Design, Bidding, Contract for Construction Award, Construction (including Clerk-of-the-Works Services) and Completed Project Closeout with respect to three (3) alternative hospital facilities leased by the State and constructed with the oversight of the Rhode Island National Guard and Executive Office of Health and Human Services (“EOHHS”). The Division of Purchases concurred with DCAMM’s recommendation to award the contract to Peregrine in the amount of \$167,200.

15. On June 10, 2020, Purchasing Agent McIntyre executed the Agreement with Peregrine on behalf of the State of Rhode Island, acting by and through DOA, Division of Purchases, on behalf of DCAMM and EOHHS. On June 25, 2020, Purchasing Agent McIntyre signed a Procurement Determination Form for Purchase Order (“PO”) #3681099, which designated Peregrine as a vendor to DCAMM for “OPM For Three Alternate Hospital Sites – Deconstruction.” On June 26, 2020, the Division of Purchases approved a Contract Purchase Award for PO #3681099 between Peregrine and DOA-DCAMM, effective June 24, 2020 through January 31, 2021, in an amount not to exceed \$167,200.

⁴ An “Owner’s Representative” is the person designated by the owner on a particular project who has the authority to give binding consents or approvals required by the contract documents. An Owner’s Representative may be selected for a project when it is determined that the State cannot manage or supervise the work of specialty trade contractors and will not directly contract with such specialty trade contractors, it is in the best interest of the State to retain same to supervise and monitor the activities of a general contractor, and/or it is in the best interest of the State to retain same to supervise and or monitor engineering and architectural services for a project.

16. On May 22, 2020, DCAMM also conducted a separate mini-bid solicitation from among existing MPA-430 vendors, including Peregrine, to provide Property Management Services for the aforementioned alternative hospital sites, which were located as follows: 1 Sabin Street, Providence; 100 Sockanosset Cross Road, Cranston; and 1530 Davisville Road, North Kingstown. DCAMM recommended that the contract be awarded to Peregrine, with a bid of \$220,040, and the Division of Purchases concurred.

17. On June 17, 2020, Purchasing Agent McIntyre executed the Agreement with Peregrine on behalf of the State, acting by and through DOA, Division of Purchases, on behalf of DCAMM and EOHHS. On June 30, 2020, Purchasing Agent McIntyre signed a Procurement Determination Form for PO #3681547, which designated Peregrine as a vendor to DCAMM for “OPM Services Property & Move Management Three Alternate Hospital Sites – Facilities Management Covid 19.” On July 1, 2020, the Division of Purchases approved a Contract Purchase Award for PO #3681547 between Peregrine and DOA-DCAMM, effective June 30, 2020 through January 31, 2021, in the amount of \$220,040.

18. Data obtained from both the Rhode Island Transparency Portal and the Rhode Island COVID-19 Transparency Portal reflects that, during the Respondent’s tenure, DOA paid Peregrine a total of \$288,112.42 relative to its work on the Alternative Hospital Sites.⁵

19. On or about December 4, 2020, Colin Kane, a founding partner of Peregrine, made a \$500 contribution by credit/debit card to the Respondent’s campaign, Brett Smiley for Mayor (“Smiley for Mayor”).

⁵ RI Transparency Portal FY 2021 data further indicates that Peregrine was a vendor to the Department of Health, being paid \$10,566.16 in February 2021 relative to “Contract Tracing/Case Investigation.” FY 2020 data reflects that the Department of Human Services paid Peregrine in the amount of \$2,240.39 relative to “Agency Bonds” on January 7, 2020.

20. Mr. Kane, who has owned 26% of the Peregrine since 2013, knew Respondent prior to Respondent's tenure as DOA director. Mr. Kane has been acquainted with the Respondent since approximately 2011.

21. The Respondent personally contacted Mr. Kane on his cell phone and asked if he would donate \$500 to his campaign.

22. At no time during the call did the Respondent make any reference to Peregrine's contracts with or work performed for the state, nor was any reference made to Peregrine's MPA status.

23. In response to the solicitation, Mr. Kane made a \$500 donation to the Respondent's campaign via its online portal.

24. After the instant allegations were reported in the media, the Respondent contacted him by telephone and advised that his donation would be returned because Peregrine does work for the state. Mr. Kane's donation was fully refunded on or about February 1, 2021.

25. Dimeo Construction Company ("Dimeo") is a general contractor/construction manager firm located in Providence, RI. In response to the COVID-19 crisis, in or about March 2020, DOA solicited bids for Construction Manager Services, as an emergency procurement, to address the need to construct and increase the State's medical treatment capacity at various locations throughout the state.

26. The mini-bid solicitation was conducted among construction management firms that had recently responded to a procurement for similar services. DOA sought bids for the remodeling, renovation, modification, retrofitting and infrastructure of a yet-to-be-determined facility to support the State's emergency alternative medical facility construction response. DOA representatives recommended that the contract be awarded to Dimeo.

27. On April 6, 2020, then-Deputy Purchasing Agent Michael Mitchell signed the Agreement with Dimeo on behalf of the State of Rhode Island, acting by and through DOA, Division of Purchases. On April 8, 2020, Deputy Purchasing Agent Mitchell signed a Procurement Determination Form for PO #3673895, which designated Peregrine as the vendor providing "Construction Management Services – Emergency Bid – Covid 19." On April 8, 2020, the Division of Purchases approved a Contract Purchase Award for PO #3673895, effective April 6, 2020 through July 31, 2020.⁶

28. Subsequently, in September 2020, DOA issued a solicitation for the Decommissioning of State of Rhode Island Alternative Hospital Sites, Cranston and Quonset. The Division of Purchases concurred with DCAMM's recommendation that the contract be awarded to Dimeo. On November 13, 2020, the Deputy Purchasing Agent executed the Agreement with Dimeo on behalf of the State, acting by and through DOA, Division of Purchases. On same date, the Division of Purchases approved a Contract Purchase Award for PO #3701013, effective November 13, 2020 through January 31, 2021. On November 13, 2020, the Deputy Purchasing Agent signed a Procurement Determination Form for PO #3701013, which designated Dimeo as a vendor to DCAMM for "Decommissioning Cranston and Quonset Alternative Hospital Sites," with an estimated award amount of \$358,962.

29. On or about December 23, 2020, Anthony Dematteo, Dimeo's Vice President of Business Development, made a \$1,000 donation by credit/debit card to the Respondent's campaign.

⁶ Said PO was subject to a total of four (4) revisions that extended the time for activation of the field hospitals and related invoices/payments through June 30, 2021.

30. Mr. Dematteo is an at-will employee of Dimeo who does not have any ownership interest in the company. Mr. Dematteo holds a title of "Vice President of Business Development," but he is not an officer of the company. He does not possess signature authority for Dimeo and has no involvement in Dimeo's financial decisions. In his position as an employee, he is not able to enter into or negotiate any contracts on Dimeo's behalf.

31. Mr. Dematteo knew Respondent prior to Respondent's tenure as DOA director. Mr. Dematteo, who has known the Respondent for several years, was not involved with Dimeo's work on the alternative hospital sites and had no involvement with the procurement process for the subject contracts.

32. In October 2020, Mr. Dematteo was contacted by an individual associated with the campaign and asked to join a Zoom meeting with the Respondent, which he attended along with more than a dozen attendees. During the meeting, the Respondent advised that he was going to be a Providence mayoral candidate but could not accept donations at that time because he was awaiting clearance from the Ethics Commission.

33. In December 2020, Mr. Dematteo received a phone call from the Respondent, during which the Respondent stated that he had received clearance from the Ethics Commission to solicit donations. According to Mr. Dematteo, at no time during the call did the Respondent make any reference to Dimeo's contracts with or work performed for the state, nor was any reference made to Dimeo's status as an MPA vendor. As a result of that telephone call, Mr. Dematteo donated \$1,000 to the Respondent's campaign.

34. In addition to the foregoing contracts, from March 15, 2020 through March 15, 2021, Dimeo was a grant recipient under the Governor's Workforce Board RI's FY 2020

Incumbent Worker Training Program, for which the Department of Labor and Training (DLT) served as the administrator.

35. On or about December 29, 2020, Edward O. Handy, III, Director, Chairman and CEO of Washington Trust Bancorp, Inc.⁷ ("Washington Trust") made a \$500 contribution by credit/debit card to Smiley for Mayor.

36. At the time of the Respondent's appointment, Washington Trust was subject to an existing MPA for the provision of Automated Teller Machine ("ATM") Services. Pursuant to MPA-335, Washington Trust furnishes, installs, and maintains standalone ATMs at specified State locations. Washington Trust pays the State a \$1.00 commission per transaction by a non-Washington Trust customer. The Division of Purchases solicited the MPA, which commenced October 1, 2015, on behalf of DCAMM. DOA subsequently exercised each of three (3) one-year renewal options, extending the MPA through August 31, 2021.

37. In addition to the foregoing State contract, in June 2020, Washington Trust and RI Commerce Corporation ("RI Commerce") entered into an agreement with respect to the latter's bond issuance on behalf of DOT. In 2020, Rhode Island received federal Grant Anticipation Revenue Vehicle ("GARVEE") bonds to be used for road construction and infrastructure projects. Washington Trust was selected to manage the bond funds, for which it charges ten (10) basis points.

38. William Ash, RI Commerce's Managing Director of Financial Services, executed the agreement with Washington Trust on June 10, 2020. DOA had no role with respect to the selection of Washington Trust. Upon its submission of invoices to DOT, Washington Trust is paid from DOT funds.

⁷ Said entity is the publicly owned holding company of the Washington Trust Company.

39. Mr. Handy knew Respondent prior to Respondent's tenure as DOA director. The Respondent contacted Mr. Handy, who he has known for many years, via telephone and asked for his support through a donation to his campaign.

40. During their conversation, no reference was made to any Washington Trust contracts with or services provided for the State, nor was there any mention of Washington Trust being an MPA vendor.

41. After Mr. Handy learned of the instant allegations through the media, the Respondent notified him that his contribution would be returned, which was effectuated on or about February 1, 2021.

42. On or about December 14, 2020, Ellis Waldman, the President, Treasurer, and CEO of Walco Electric Company ("Walco"), contributed \$250 by credit/debit card to the Respondent's campaign. Walco is a Providence, RI automation engineering and industrial service company that specializes in rotating electro-mechanical and automated process equipment.

43. At the time of the Respondent's appointment, Walco was one (1) of seven (7) vendors that had been awarded MPA-445, Lift Trucks, Inspections & Maintenance, to provide repair, service, inspection, warranty repair, and maintenance of motorized aerial and hoisting equipment. MPA-445 was in effect from March 15, 2018 through March 15, 2021, as memorialized by Contract Purchase Award # 3559137 between Walco and the State, acting by and through DOA, Division of Purchases.

44. During the Respondent's service as Director, DOT utilized Walco to perform specialty repairs to certain DOT equipment. Walco's invoices to DOT for such services were paid directly by DOA, on August 7, 2020, and December 11, 2020.⁸

45. FY 2020 and FY 2021 RI Transparency Portal data also reflects DOT's issuance of payments to Walco for infrastructure and maintenance services provided to the agency.⁹

46. Mr. Waldman was acquainted with Respondent prior to Respondent's tenure as DOA director. Mr. Waldman received a telephone call from the Respondent during which the Respondent informed him that he would be seeking mayoral office. The Respondent asked Mr. Waldman if he would support his candidacy by donating to his campaign.

47. At no time during the call did the Respondent make any reference to Walco's contracts with or work performed for the state, nor was any reference made to Walco's status as an MPA vendor.

48. Subsequent to publication of a media report regarding the instant allegations, the Respondent contacted Mr. Waldman and advised him that his campaign contribution would be returned. Mr. Waldman's contribution was refunded on or about February 4, 2021.

49. As provided by the State Purchases Act and related regulations promulgated by the Chief Purchasing Officer, prior to procuring the services of an attorney, a state agency shall demonstrate to the satisfaction of the Chief Purchasing Officer the following: 1) the need for and scope of the services to be performed; 2) that no legal personnel employed by the state on a full-time basis is available to perform those services; 3) that funding is available, indicating from which sources the funding is to be provided; and 4) that attorneys to be engaged meet minimum

⁸ Vendors submit invoices to DOT, which are then forwarded to DOA for payment. DOA pays the invoices directly and, thereafter, bills DOT for its costs through rotary accounts.

⁹ Walco also performed services for the Office of the Adjutant General during this same period.

requirements for appropriate professional licensing, competence, and ability to perform the services.

50. The Chief Purchasing Officer requires that state agencies submit a Request to Retain Legal Counsel (“RLC”) form to the Office of DOA Director for approval prior to the engagement of outside legal counsel. The requirement applies to all executive branch state agencies and section 37-2-70(a) provides that such a request cannot be approved without the Chief Purchasing Officer’s signature. An agency cannot retain outside counsel without undertaking this process, without which it would be unable to pay said counsel.

51. Since at least 2007, the law firm of Shechtman Halperin Savage LLP¹⁰ (“SHS” or the “firm”) has served as outside legal counsel to the Employees’ Retirement System of Rhode Island and the Retirement Board (collectively “ERSRI”), with Michael Robinson, Esq., a partner of the firm, designated as the primary attorney providing such services. By engagement letter dated August 18, 2017, ERSRI retained the services of SHS as its outside legal counsel (“Legal Counsel”). Said agreement was subject to four (4) one-year extensions at the discretion of the General Treasurer, and it was subsequently extended through June 30, 2021.

52. Services provided include advising ERSRI in areas including, but not limited to, board governance, open meeting and open record compliance, employee benefits, pension, personnel administration, operating policies, legislation, and regulations, including drafting legislation and regulations. The firm also represents ERSRI in litigation, administrative hearings, and before legislative committees.

¹⁰ In February 2021, several attorneys associated with SHS formed a new firm, which is now known as Savage Law Partners, LLP. Herein, all references to the law firm pertain to the original SHS firm.

53. Legal Counsel attends all full Retirement Board meetings and provides legal guidance to the Board. Legal Counsel represents ERSRI in administrative proceedings and handles appeals to the Rhode Island courts. Members of the Retirement Board have the ability to seek advice from SHS and may, by majority vote, direct Legal Counsel to take actions.

54. As DOA Director, the Respondent at all times served as a member of the Retirement Board pursuant to R.I. Gen. Laws § 36-8-4.¹¹

55. ERSRI Board meeting minutes evince that the Respondent was present at four (4) of seven (7) Board meetings held from January 15, 2020 to January 13, 2021, all of which Attorney Robinson attended in his capacity as Legal Counsel. The Respondent participated in unanimous votes directing Attorney Robinson to take official actions regarding ERSRI litigation matters.¹²

56. At the Board's direction, by correspondence dated February 11, 2021, Attorney Robinson requested an advisory opinion from the Ethics Commission with regard to the circumstances under which members of the Board, including the Respondent, may participate in the adjudication of disability applications and/or contested administrative hearings.¹³ As a Board member at the time of said request, the Respondent is specifically referenced in Attorney Robinson's request letter. The Respondent resigned from his position as Director prior to the Commission's issuance of Advisory Opinion 2021-40 on May 18, 2021.

¹¹ Section 38-8-4 (a) further provides that the membership of the Retirement Board shall include a representative of the Budget Office, or his or her designee from within the Budget Office, who shall be appointed by the DOA Director.

¹² On September 16, 2020, the Board directed Attorney Robinson to file a petition for issuance of a writ of certiorari to seek Supreme Court review of a litigation matter. On December 14, 2020, the Board directed its counsel to withdraw a pending appeal.

¹³ The Respondent was not present for the Board's January 13, 2021 vote to direct its counsel to seek said advisory opinion.

57. Since 2006, the Treasurer's Office has not submitted an RLC form to DOA regarding its engagement of SHS, although it had done so in prior years.¹⁴ During the Respondent's service as a member of the Retirement Board, the Treasurer's Office paid SHS a total of \$272,174 for its legal services.

58. By engagement letter dated October 15, 2020, SHS was retained as outside legal counsel to the Council on Postsecondary Education, the Office of the Postsecondary Commissioner, Rhode Island College ("RIC"), and the Community College of Rhode Island ("CCRI") through June 30, 2021. SHS has provided such services since approximately 2013.

59. In October 2020, Ronald A. Cavallaro, Esq., General Counsel to the Office of the Postsecondary Commissioner, submitted an RLC form to the Respondent's office seeking authorization to retain SHS, as he has done on an annual basis. Said form included the name of the firm and a list of individual attorneys who would be performing the services, including Jonathan Savage, Preston Halperin, and Jeremy Savage.

60. On October 26, 2020, the Respondent signed the RLC form in his capacity as Chief Purchasing Officer and approved the hiring of SHS. During calendar year 2020, SHS was paid \$6,234 for its services.

61. In addition to the foregoing, SHS provided legal services to various quasi-public entities during the Respondent's service as Director, including the Rhode Island Health and Educational Building Corporation, Rhode Island Public Transit Authority, and RI Commerce. As "public agencies" specified by § 37-2-7(16), the aforesaid entities are not required to seek DOA authorization prior to retaining the services of outside legal counsel.

¹⁴ Upon a DOA inquiry in 2008, the Treasurer's Office took the position that it was not required for the Treasurer's appointment of counsel pursuant to § 36-8-9(a).

62. On December 31, 2020, Smiley for Mayor received three (3) checks, each in the amount of \$1,000, from Jonathan Savage, Preston Halperin, and Jeremy Savage.

63. The Respondent directly solicited a campaign contribution from Jonathan Savage, Esq., a founding SHS partner. Attorney Savage knew Respondent prior to Respondent's tenure as DOA director, having been acquainted with the Respondent and his husband for many years.

64. Attorney Savage informed both his law partner, Preston Halperin Esq., and his son, Jeremy Savage, Esq., who served as "Of Counsel" to the firm, that he had donated to the Respondent's campaign and suggested that they also contribute.

65. Attorney Halperin, SHS managing partner, did not have any contact with either the Respondent or any representative of his campaign. Attorney Halperin donated to the Respondent's campaign after being asked to do so by Attorney Jonathan Savage.

66. The contributions of Attorney Jonathan Savage and Attorney Halperin were refunded on or about February 1, 2021, and February 4, 2021.

67. On or about December 29, 2020, Anthony Thomas and Thomas Guerra, partners in The Foundry Associates, L.P. ("Foundry Associates"), each contributed \$1,000 to the Respondent's campaign.

68. Foundry Associate entities own real property in Providence located at 235 Promenade Street and 555 Valley Street. During the Respondent's service as DOA Director, said entities leased office space to the Department of Environmental Management ("DEM") and Executive Office of Commerce, both state agencies, as well as Rhode Island Infrastructure Bank and RI Commerce, quasi-public agencies.

69. On August 18, 2015, the State of Rhode Island, acting by and through DEM, entered into a ten-year lease agreement with Foundry Parcel Fifteen Associates, LLC ("Foundry

Parcel Fifteen”) for office space located at 235 Promenade Street, the “DEM Lease.” The DEM Lease provided for annual rent in the amount of \$2,447,969 during the period of July 8, 2016 to July 7, 2021, and annual rent in the amount of \$2,586,772 from July 8, 2021 to July 7, 2026. Pursuant to its terms, and in accordance statutory and regulatory provisions, the lease was subject to the approval of the State Properties Committee (“Properties Committee”).¹⁵

70. As Managing General Partner of Foundry Associates, the sole member of Foundry Parcel Fifteen, Mr. Guerra signed the lease on August 12, 2015 for the landlord. On August 17, 2015, Janet L. Coit, then-DEM Director, executed the lease on behalf of the tenant, the State, acting through DEM. The DEM lease includes a Properties Committee signature page, which was executed on August 18, 2015, by its then-Chairman, Kevin M. Flynn, Assistant Attorney General Richard Woolley, and Public Member Robert Brunelle.¹⁶

71. Pursuant to R.I. Gen. Laws § 37-6-1, the DOA Director appoints the Chairperson of the Properties Committee and also serves as an *ex-officio* member. The Director may designate a subordinate from within his department to serve in his stead. At all relevant times, Dane Kwiatkowski served as the Properties Committee as the Respondent’s designee.

72. In 2019, DOA’s Division of Statewide Planning moved from its One Capitol Hill offices to within DEM space at 235 Promenade Street. Statewide Planning resides within DEM office space pursuant to a Memorandum of Understanding with DEM and not pursuant to a separate lease agreement with the landlord.

¹⁵ In accordance with R.I. Gen. Laws § 37-6-5, the Properties Committee shall approve the acquisition or lease of real property. No agency shall become a lessee of land, space or other real property unless said action is approved by the Properties Committee. See also 600-RICRI-00-00-1.2 Acquisition of Land, Space, or Other Real Property By Lease.

¹⁶ A lease agreement executed by the agency and lessor must be approved as to substance by the DOA Director and approved as to form by the Attorney General. 600-RICRI-00-00-1.2.8(E), Request for Approval of Lease.

73. At DCAMM's request, Foundry Associates made modifications to the demised premises to effectuate the move. Pursuant to PO #3637855 issued on behalf of DOA-DCAMM on July 30, 2019, Foundry Associates performed construction work as specified by DCAMM. On November 1, 2019, DOA paid Foundry Associates \$35,647 for the work performed.

74. Subsequently, in August 2020, while the Respondent was Director, DOA-Facilities Management requested a quote from Foundry Associates for the construction of a transom window for the Water Resources Board, Division of Statewide Planning, at 235 Promenade Street.¹⁷ On August 12, 2020, PO #3689093 issued in the amount of \$3,130 for the project.

75. Due to the pandemic, the work was never completed. Unless the Water Resources Board renews its request for the work to be performed, the project is cancelled. No work can be performed until a new PO is issued and approved by the Division of Purchases.

76. On January 31, 2017, the State of Rhode Island, acting by and through the Executive Office of Commerce ("EOC"), entered into a lease agreement with Foundry ALCO Members, LLC ("Foundry ALCO") for office space located at 555 Valley Street, Building # 58, Suite 203, the "EOC Lease." The EOC Lease provided an initial rental period of April 1, 2017 to March 31, 2022, subject to payment of annual rent in the amount of \$71,234, and it contained an option to extend the lease for an additional five-year term, commencing April 1, 2022, with an annual rental payment of \$76,576. Pursuant to its terms, and as required by statute and regulation, the lease was subject to the Properties Committee's approval.

¹⁷ As DOA Director, the Respondent served as Chairperson of the State Planning Council pursuant to R.I. Gen. Laws § 42-11-10(c). The Planning Council is a 27-member body that oversees the work of the Division of Statewide Planning. On his 2020 Financial Disclosure Statement, filed on April 21, 2021, the Respondent disclosed his service as a member of the State Planning Council and listed its address as 235 Promenade Street.

77. As Managing General Partner of Foundry Associates, the sole member of Foundry ALCO, Mr. Guerra signed the lease on January 30, 2017 for the landlord. EOC Secretary Stefan Pryor executed the lease on January 26, 2017, on behalf of the tenant, the State, acting through EOC. The EOC lease includes a Properties Committee signature page, executed on January 31, 2017, by its then-Chairman, Parag Agrawal, Assistant Attorney General Gregory S. Shultz, and Marco Schiappa, then-Designee of the Director, DOA.

78. During 2020, the Office of Housing & Community Development was relocated from DOA's William E. Powers Building in Providence to within EOC's Valley Street office space.¹⁸ As with the Statewide Planning move, said move did not require a new lease agreement with the landlord.

79. On behalf of DCAMM, on February 25, 2020, the Division of Purchases approved PO #3668350, in the amount of \$28,140, for Foundry Associates' performance of construction work necessitated by the move. DOA paid Foundry Associates in full on July 17, 2020.

80. In December 1992, Rhode Island Infrastructure Bank's ("RIIB") predecessor agency, Rhode Island Clean Water Finance Agency, entered into a lease agreement with Foundry Associates for property located at 235 Promenade Street, Suite 119. The Seventh Amendment to the lease, executed by RIIB and Foundry Parcel Fifteen Associates, LLC, was in effect from February 1, 2016 through January 31, 2021.¹⁹ From January 2020 to March 2021, RIIB made lease payments totaling \$150,925.

¹⁸ Said property is also known as 315 Iron Horse Way.

¹⁹ Mr. Guerra executed the amendment on behalf of the landlord, Foundry Parcel Fifteen Associates, LLC, Foundry Associates' successor-in-interest.

81. In March 2006, RI Commerce entered an initial lease agreement with American Locomotion Works for office space located at 555 Valley Street, Building #51. In September 2016, through a Fifth Amendment thereto, Foundry ALCO was named as the landlord's successor-in-interest. In April 2018, a Sixth Amendment extended the lease term to March 31, 2022. From January 2020 to March 2021, RI Commerce made lease payments totaling \$534,625.

82. As quasi-public agencies, RIIB and RI Commerce were neither required to seek DOA authorization to enter into lease agreements for real property, nor did DOA have any involvement or role with the negotiation or approval of same. The sole signatories to the subject lease agreements were Mr. Thomas, as Managing Member of Foundry Associates, and the respective quasi-public agency officer/director. Said leases were not subject to review and approval by the Properties Committee.

83. Mr. Thomas knew Respondent prior to Respondent's tenure as DOA director. The Respondent contacted Mr. Thomas, who he has known for more than ten years, by telephone and inquired whether he would contribute to his mayoral campaign. The Respondent also asked Mr. Thomas if he thought that his Foundry Associates partner, Thomas Guerra, would also make a donation.

84. At no time during their telephone conversation did the Respondent make any reference to Foundry Associates' state contracts or leases.

85. Mr. Guerra's \$1,000 contribution to the Respondent's campaign was made upon learning of Mr. Thomas' donation. Mr. Guerra has never spoken with the Respondent.

86. After the instant allegations were reported in the media, the Respondent contacted Mr. Thomas and stated that his campaign contribution would be returned to him. Both partners' contributions were refunded on or about February 4, 2021.

87. On or about November 9, 2020, John R. Galvin, President and CEO of AAA Northeast ("AAA"), made a \$1,000 contribution by credit/debit card to Smiley for Mayor.

88. Since 2003, AAA and the Rhode Island Division of Motor Vehicles ("DMV") have been engaged in a contractual relationship that provides for AAA's performance of certain motor vehicle registration and drivers licensing activities on behalf of its members.²⁰ Under the agreement, executed solely by Mr. Galvin and DMV Administrator Walter R. Craddock, Esq., DMV has no obligation to pay any fees, commissions, or other compensation to AAA. DMV did not provide any such compensation to AAA during the Respondent's tenure.

89. During the period of June 20, 2020 to August 31, 2020, a contractual agreement existed between the Governor's Workforce Board ("GWB") and AAA, under which the Department of Labor and Training ("DLT") issued a \$5,000 payment to AAA for its participation in a FY 2020 Nontrade Apprenticeship Incentive Program. Under the agreement, AAA was entitled to receive a \$1,000 reimbursement payment for each of five (5) non-trade apprentices who had successfully completed a probationary training period with AAA.

90. DLT paid AAA from its general revenue funds. DOA had no role in GWB's selection of AAA as a participating employer. DOA's only function was to administratively facilitate payment to AAA, at DLT's request, through issuance of a PO.

²⁰ The original agreement was amended on February 13, 2018, to reflect AAA Northeast as successor to AAA Southern New England, as well as the Department of Revenue, DMV as successor to the Rhode Island DOT, DMV. In 2006, the Department of Revenue was established as a separate department within the executive branch, headed by a Director of Revenue, who is appointed by the Governor.

91. On October 30, 2020, DOT paid AAA \$6,375 pursuant to a FY 2020 National Highway Safety Authority federal grant, Shifting Gears: The Blunt Truth About Marijuana and Driving. AAA, a subgrantee, developed a program to be delivered to high school students in health education classrooms and within community-based organizations. DOA had no involvement with respect to the federal grant or the selection of AAA as a subgrantee.

92. Mr. Galvin knew Respondent prior to Respondent's tenure as DOA director, having known him for many years. The Respondent contacted Mr. Galvin via cell phone and advised that he would be seeking mayoral office. The Respondent asked Mr. Galvin if he could help him by making a donation.

93. During the conversation, no reference was made to AAA contracts with or services provided for the State.

94. After the instant allegations were reported in an online media article, the Respondent contacted Mr. Galvin and informed him that he would be returning his donation. On or about February 4, 2021, Mr. Galvin's donation was refunded.

95. Pursuant to a public auction conducted by DOT on June 30, 2020, AAA purchased State-owned property located at the intersection of Greenwich Avenue and Veterans Memorial Boulevard in Warwick.²¹

96. On September 15, 2020, the Properties Committee voted to approve and execute a Purchase and Sale Agreement between the State, acting by and through DOT, and AAA for sale of the subject property in the amount of \$250,000. Said Agreement contained a Properties

²¹ On April 28, 2020, the Properties Committee unanimously voted to give DOT preliminary approval to convey the subject property by public auction.

Committee signature page, which was executed on September 15, 2020 by its Chairperson, Marco Schiappa, and DOA Designee Dan Kwiatkowski.

97. On December 8, 2020, the Properties Committee voted to approve both an Amendment to the Purchase and Sale Agreement and a Bargain and Sale Deed ("Deed") relative to the pending property transaction.

98. By said Deed, "[t]he State of Rhode Island, acting through Peter Alviti, Jr., P.E., the Director of the Department of Transportation, and Brett Smiley, the Director of Administration, pursuant to the authority vested in them by Title 37, Chapter 7 of the Rhode Island General Laws" conveyed the subject property to AAA. The Deed contains a line for the Respondent's signature as Director, which bears a signature of "Brett Smiley," notarized on December 16, 2020.²²

99. On or about December 29, 2020, Joseph R. Vinagro, President of Vinagro Corp., a Johnston, RI corporation engaged in the disposal and processing of construction and related materials, contributed \$1,000 by check to Smiley for Mayor.

100. Vinagro Corp. did have contracts with state agencies during the Respondent's tenure as Director.²³

101. Mr. Vinagro's contribution to the Respondent's campaign was not the result of a solicitation by either the Respondent or his campaign. Mr. Vinagro, contributed to the

²² By memorandum dated December 14, 2020, the Respondent delegated to DOA Attorney Frederick Stolle the authority to act in his stead, including the authority to execute documents on his behalf, during the period of December 14, 2020 through December 25, 2020, when he would be absent from his office. A copy of said memorandum is attached to the Deed.

²³ Included among the subject Vinagro Corp. contracts are the following: RIC- Delivery of Treated Sand, PO # 3646635 (9/1/19 - 5/31/22); DOT- FY 2021 Disposal of Highway Repair Waste Materials (PO #3682388, issued 7/8/20); DEM- Barriers to Block Beach Parking Lot (PO #3693999, issued 9/21/20); and Office of the Adjutant General/RI National Guard- Hazardous Material Testing, Abatement and Demolition, PO #3703950 (12/1/20 - 11/30/21).

Respondent's campaign after being contacted by Kenneth Marandola, a retired State Trooper who he has known for a long time.

102. At the time, Mr. Vinagro assumed that Mr. Marandola, who telephoned him and asked if he would donate to the Respondent's campaign, was associated with the campaign. No reference was made to Vinagro Corp.'s contracts with or work performed for the State during their conversation.

103. Mr. Marandola acted on his own when he contacted Mr. Vinagro and has no affiliation with the Respondent's campaign. On the same date that Smiley for Mayor received Mr. Vinagro's check for \$1,000, it also received a like contribution from Mr. Marandola.

104. Mr. Vinagro's contribution was refunded on or about February 1, 2021.

105. On or about December 15, 2020, Anthony F. Rosciti, Vice President of Rosciti Construction Company, LLC ("Rosciti Construetrion"), located in Johnston, RI, made a \$1,000 contribution by check to the Respondent's campaign.

106. During the Respondent's service as Director, DOA processed payments to Rosciti Construction, on behalf of DOT, for its performance of snow removal services. All such payments were made from DOT's budget.

107. Rosciti Construction has been providing snow removal services to DOT for the past forty (40) years in response to newspaper advertisements placed by DOT.²⁴ The company has dealt with DOT exclusively regarding its snow removal services and it has had no involvement with DOA.

108. Mr. Rosciti was not solicited by the Respondent or his campaign.

²⁴ DOA is not involved with the agency's selection of its snow removal vendors. Prospective vendors respond to advertisements placed annually by DOT. Once selected by the agency, a vendor must register online with the Division of Purchases to facilitate the issuance of payments.

109. Mr. Rosciti's contribution was refunded on or about February 4, 2021.

110. On or about December 4, 2020, the Respondent solicited a campaign contribution from Elizabeth Roberts, Director of the Academic Health Collaborative at the University of Rhode Island, a state employee.

111. As a result of said solicitation, Ms. Roberts contributed \$500 to Smiley for Mayor via credit/debit card on or about December 4, 2020.

112. Ms. Roberts' contribution was refunded on or about January 21, 2021.

II. CONCLUSIONS OF LAW

1. As DOA Director for the State of Rhode Island, the Respondent was at all times a state appointed official subject to the Rhode Island Code of Ethics in Government pursuant to R.I. Gen. Laws § 36-14-4(2).

2. Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011) ("Regulation 1.4.4") prohibits a public official or employee from soliciting or requesting, directly or through a surrogate, any political contributions from a subordinate for whom, in his official duties and responsibilities, he exercises supervisory responsibilities.

3. For the purposes of the prohibition on solicitations, the term "subordinate" includes employees, contractors, consultants, or appointed officials of the official's or employee's agency.

4. Peregrine Group, LLC was a subordinate over which the Respondent exercised supervisory responsibilities as DOA Director, pursuant to Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011). The Respondent's solicitation of a campaign contribution from Colin Kane, a partner of Peregrine Group, LLC, violated Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011).

5. Washington Trust Company was a subordinate over which the Respondent exercised supervisory responsibilities as DOA Director, pursuant to Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011). The Respondent's solicitation of a campaign contribution from Edward O. Handy, III, CEO and Chairman of the Board of Directors of the Washington Trust Company, violated Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011).

6. Walco Electric Company was a subordinate over which the Respondent exercised supervisory responsibilities as DOA Director, pursuant to Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011). The Respondent's solicitation of a campaign contribution from Ellis Waldman, President, Treasurer, and CEO of Walco Electric Company, violated Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011).

7. Shechtman Halperin Savage, LLP, was a subordinate over which the Respondent exercised supervisory responsibilities as DOA Director, pursuant to Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011). The Respondent's solicitation of a campaign contribution from Jonathan Savage, a partner of Shechtman Halperin Savage, LLP, violated Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011).

8. The Foundry Associates was a subordinate over which the Respondent exercised supervisory responsibilities as DOA Director, pursuant to Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011). The Respondent's solicitation of a campaign contribution from Anthony Thomas, a partner of the Foundry Associates, violated Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011).

9. AAA Northeast was a subordinate over which the Respondent exercised supervisory responsibilities as DOA Director, pursuant to Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011). The Respondent's solicitation of a campaign contribution from John R. Galvin, President and CEO of AAA Northeast, violated Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011).

10. The contribution from Preston Halperin did not violate Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011).

11. The contribution from Jeremy Savage did not violate Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011).

12. The contribution from Thomas Guerra did not violate Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011).

13. The contribution from Joseph R. Vinagro did not violate Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011).

14. The contribution from Anthony F. Rosciti did not violate Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011).

15. The contribution from Elizabeth Roberts did not violate Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011).

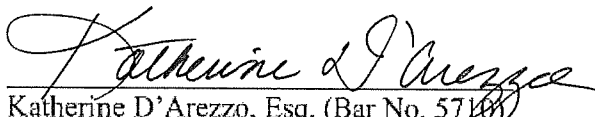
III. SETTLEMENT

Pursuant to the above Findings of Fact and Conclusions of Law, the parties hereby agree, subject to the approval of the Commission, pursuant to R.I. Gen. Laws § 36-14-13(d) and 520-RICR-00-00-3.16 Informal Disposition (1011), to the following:

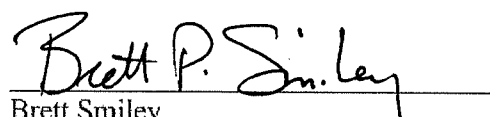
1. The Commission shall enter an Order and Judgment adopting the Findings of Fact, Conclusions of Law and terms of the Settlement herein.

2. The Respondent further agrees that, pursuant to the above Findings of Fact and Conclusions of Law, the Prosecution will recommend, pursuant to R.I. Gen. Laws § 36-14-13(d), the imposition of a civil penalty in the amount of Four Thousand Five Hundred Dollars (\$4,500). The Respondent agrees to the payment of said civil penalty.

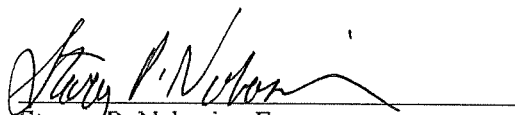
3. The above terms represent the full and complete Informal Resolution and Settlement for Complaint No. 2021-1.


Katherine D'Arezzo, Esq. (Bar No. 57141)
Commission Prosecutor

Dated: 9/21/2021


Brett Smiley
Respondent

Dated: 9/20/2021


Stacey P. Nakasian Esq.
Respondent's Counsel

Dated: 9/20/21